IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 18.10.2006

(1) I.T.A. No.154 of 2004

**Naranjan Singh v. The Income Tax Officer, Phagwara, Jalandhar**

(2)I.T.A. No.337 of 2004

**Naranjan Singh v. The Income Tax Officer, Phagwara, Jalandhar**

(3)I.T.A.No.338 of 2004

**Naranjan Singh v. The Income Tax Officer, Phagwara, Jalandhar**

(4)I.T.A. No.339 of 2004

**Naranjan Singh v. The Income Tax Officer, Phagwara, Jalandhar**

Present: Mr. K. L. Goyal, Advocate for the appellant.
Dr. N. L. Sharda, Advocate for the respondent.

CORAM:

Hon'ble Mr.Justice Adarsh Kumar Goel
Hon'ble Mr. Justice Rajesh Bindal

1.Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

**Rajesh Bindal, J.**

These appeals arise from a composite order dated 19.1.2004, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, `the Tribunal'), in I.T.A. Nos.531 to 534 (ASR) 1998, for the assessment years 1992-93 to 1995-96.

At the time of admission of appeals, the following substantial question of law was framed for adjudication by this Court:

> "Whether in the facts and circumstances of the case, the Tribunal was correct in law in holding that the assessee was not entitled to set off depreciation allowed in the case of the firm by taking recourse to the provisions of Section 155 of the Income-tax Act, 1961 ?"

Firstly, the case for the assessment year 1992-93 is being taken up.

Return for the year in question was filed by the assessee on 31.8.1992. While filing the return, the assessee could not claim carry forward of losses from the year 1991-92 as, by that time, dispute regarding carry forward of losses for the year 1991-92 had not been settled in appeal. It was only vide order dated 9.11.1993 that the appeal effect of the order of the Deputy Commissioner of Income-tax (Appeals) [for short, `the DCIT (A)'] dated 22.9.1993 given for the assessment year 1991-92, where unabsorbed depreciation of Rs. 4,57,629/-, was quantified to be carried forward to the next year. Even before the appeal effect was given to the order of the DCIT(A) for the year 1991-92 on 9.11.1993, the return of the firm for the year 1992-93 had already been processed on 31.5.1993. After the appeal effect had been given, the assessee moved an application under Section 154 of the Income-tax Act, 1961 (for short, `the Act') for rectification of the orders passed for the assessment year 1992-93 for giving consequential effect in the year of the appeal effect order passed for the assessment year 1992-93. The claim of the assessee was rejected by the Assessing Officer vide order dated 9.2.1998 on the ground that since the return had been processed under Section 143(1)(a) of the Act, no action under Section 154 of the Act is possible. In appeal, the assessee succeeded before the Commissioner of Income-tax (Appeals) [for short, `the CIT (A)'], but in further appeal by the Revenue, the Tribunal reversed the order of the CIT(A).

The short submission made by learned counsel for the appellant in the present case is that at the time when the return for the assessment year 1992-93 was filed, as the loss to be carried forward for the assessment year had not been determined there was no possibility of assessee's claiming carry forward of unabsorbed depreciation. However, in appeal, for the assessment year 1991-92, the plea of the assessee was accepted; the appeal effect of the order passed by the CIT(A) for the assessment year 1990-91 and consequently for 1991-92 was given by the Assessing Officer only after the return for the assessment year 1992-93 had

already been filed. Accordingly, the assessee could not have claimed deduction on account of carry forward of losses at that stage. The benefit, which was admissible, was not granted to the assessee in spite of clear finding in the appeal effect order dated 9.11.1993. This being an error apparent on record deserved rectification in the proceedings under Section 154 of the Act. The only ground mentioned in the order rejecting the claim of the assessee for rectification was that the return having been processed under Section 143(1)(a) of the Act and the assessee having not claimed the benefit at the initial stage will not be permitted to claim the benefit thereof at this stage.

Having heard learned counsel for the parties, we find substance in the submission of the learned counsel for the appellant. Once the claim of the assessee for the previous years had not been determined finally in the appeal before the return for the assessment year 1992-93 was filed, there was no occasion for the assessee to claim the benefit thereof at the time of filing of the return. Section 155 of the Act enables an assessee to move an application for rectification under Section 154 of the Act, in case there is a change in the income of the firm. Accordingly, in our view, the application of the assessee was maintainable and he was entitled to the benefit of carry forward of losses as determined vide order dated 9.11.1993 and apportion the same amongst the partners. Thus, the question referred for the assessment year 1992-93 is answered in favour of the assessee and against the Revenue.

As far as assessment years 1993-94 to 1995-96 are concerned, in our view, the assessee would not be entitled to claim any benefit for the reason that in the subsequent years, the firm ceased to exist. In case, the firm itself is not in existence and the unabsorbed depreciation is not carried forward in the hand of the firm, there was no question of apportionment thereof in the hands of the partners. Accordingly, for the assessment years 1993-94 to 1995-96, the claim of the assessee is not permissible and the appeals of those years are dismissed.

The appeals are disposed of in the manner indicated above.

**( Rajesh Bindal )**
**Judge**

**(Adarsh Kumar Goel)**
**Judge**

18.10.2006
mk